

Message Text

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COAST GUARD: CAPT. S. BECKWITH

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L/ T - CBEVANS

MARAD - RBOURDON (SUBS)

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FM SECSTATE WASHDC

TO AMEMBASSY CARACAS PRIORITY

INFO AMEMBASSY LONDON

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E. O. 11652: N/ A

TAGS: ETRN, VE, US

SUBJECT: FREEBOARD AGREEMENTS

REF: CARACAS 2698 AND 2845; SANTIAGO 1316

LONDON FOR FORD

1. USCG STATES IT HAS REQUESTED DISTRICT OFFICE (MIAMI)
HAVING JURISDICTION FOR PUERTO RICO TO STAY FINES
VENEZUELAN VESSELS NEXT SEVERAL WEEKS PENDING CLARIFICA-
TION LEGAL SITUATION AS TO ACCEPTABILITY 1930 LOAD LINE
AGREEMENT (LLA) CERTIFICATES IN US WATERS WHERE
PROVISIONS OF 1966 INTERNATIONAL LOAD LINE CONVENTION
(ILLC) APPLICABLE.

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2. THE ILLC OF APRIL 5, 1966, OF WHICH BOTH USG AND GOV
SIGNATORIES, ENTERED INTO FORCE JULY 21, 1968. AS EMBASSY

ARE GOV HAS NOT RATIFIED THE CONVENTION. HOWEVER, FOR
6 ILLC, WHICH SUPERCEDED 1930 LLA, IS NOW US LAW
US, 1966 ILLC, WHICH SUPERCEDED 1930 LLA, IS NOW US LAW
AND REGULATIONS IMPLEMENTING CONVENTION PLUS OTHER
DOMESTIC REGULATIONS UNDER THE AUTHORITY OF 46 USC 85
ARE CURRENTLY APPLICABLE.

3. THE DEPARTMENT HAS REVIEWED THE USCG FILE
AND IS OF THE OPINION THAT THE GOV POSITION RE
ACCEPTABILITY OF 1930 LLA CERTIFICATES ERRONEOUSLY BASED
ON MISREADING OF ARTICLE 4 OF THE CONVENTION. ARTICLE 4
(APPLICATION) READS AS FOLLOWS:

(1) THE PRESENT CONVENTION SHALL APPLY TO

(A) SHIPS REGISTERED IN COUNTRIES THE GOVERNMENTS OF WHICH
ARE CONTRACTING GOVERNMENTS;

(B) SHIPS REGISTERED IN TERRITORIES TO WHICH THE PRESENT
CONVENTION IS EXTENDED UNDER ARTICLE 32; AND

(C) UNREGISTERED SHIPS FLYING THE FLAG OF A STATE, THE
GOVERNMENT OF WHICH IS A CONTRACTING GOVERNMENT

(2) THE PRESENT CONVENTION SHALL APPLY TO SHIPS ENGAGED
ON INTERNATIONAL VOYAGES.

(3) THE REGULATIONS CONTAINED IN ANNEX I ARE SPECIFICALLY
APPLICABLE TO NEW SHIPS.

(4) EXISTING SHIPS WHICH DO NOT FULLY COMPLY WITH THE
REQUIREMENTS OF THE REGULATIONS CONTAINED IN ANNEX I OR
ANY PART THEREOF SHALL MEET AT LEAST SUCH LESSER RELATED
REQUIREMENTS AS THE ADMINISTRATION APPLIED TO SHIPS ON
INTERNATIONAL VOYAGES PRIOR TO THE COMING INTO FORCE OF
THE PRESENT CONVENTION; IN NO CASE SHALL SUCH SHIPS BE
REQUIRED TO INCREASE THEIR FREEBOARDS. IN ORDER TO TAKE
ADVANTAGE OF ANY REDUCTION IN FREEBOARD FROM THAT
PREVIOUSLY ASSIGNED, EXISTING SHIPS SHALL COMPLY WITH
ALL THE REQUIREMENTS OF THE PRESENT CONVENTION.

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(5) THE REGULATIONS CONTAINED IN ANNEX II ARE APPLICABLE
TO NEW AND EXISTING SHIPS TO WHICH THE PRESENT CONVENTION
APPLIES.

THIS ARTICLE, HOWEVER, APPLIES THE CONVENTION TO VESSELS
OF CONTRACTING NATIONS ONLY, WHICH VENEZUELA IS NOT AT
THE PRESENT TIME. FYI. PARAGRAPH 4 OF THE ARTICLE MEANS
THAT AN EXISTING FLAG VESSEL OF A CONTRACTING NATION
WOULD NOT BE REQUIRED TO CHANGE AN EXISTING LOAD LINE IF

THE OWNER CHOSE NOT TO DO SO. HOWEVER, THE EXISTING LOAD LINE WOULD BE NOTED AND THE APPROPRIATE DATA TRANSFERRED TO THE NEW CERTIFICATE ISSUED IN ACCORDANCE WITH THE 1966 ILLC. IF THE OWNER OF A VESSEL OF A CONTRACTING NATION WISHED TO LOAD THE VESSEL DEEPER THAN ITS ASSIGNED LOAD LINE AND THEN CURRENT CERTIFICATE INDICATED, IT WOULD BE NECESSARY TO COMPLY WITH THE REGULATIONS OF THE CONVENTION BEFORE THE APPROPRIATE 1966 ILLC CERTIFICATE NOTING THE CHANGE COULD BE ISSUED. MOREOVER, FROM THE STANDPOINT OF SAFETY, THE 1966 ILLC

IS CONSIDERED AN ADVANCEMENT OVER THE 1930 LLA, PARTICULARLY IN THAT REGULATION 10 OF ANNEX I OF THE CONVENTION REQUIRES THAT THE MASTER OF A VESSEL BE SUPPLIED SUFFICIENT INFORMATION TO ENABLE HIM TO ARRANGE THE LOADING AND BALLASTING OF HIS SHIP IN SUCH A WAY AS TO AVOID THE CREATION OF ANY UNACCEPTABLE STRESSES IN THE SHIP'S STRUCTURE UNDER VARYING CONDITIONS OF SERVICE.

4. THE QUESTION AT HAND THEREFORE BECOMES ONE OF THE ACCEPTABILITY OF THE 1930 LLA CERTIFICATES. ARTICLE 16 OF THE CONVENTION ALLOWED A TWO YEAR GRACE PERIOD FOR EXISTING CERTIFICATES (I. E. 1930 LLA CERTIFICATES) WHICH EXPIRED JULY 21, 1970. MOREOVER, ARTICLE 24, WHICH RECOGNIZES THE VALIDITY OF PREVIOUS AGREEMENTS (I. E. 1930 LLA), DOES SO ONLY TO THE EXTENT SUCH DO NOT CONFLICT WITH THE PROVISIONS OF THE 1966 ILLC. ACCORDINGLY, SINCE JULY 21, 1970, THE ONLY LOAD LINE CERTIFICATES ACCEPTABLE TO THE US FOR A FOREIGN FLAG VESSEL IN THE NAVIGABLE WATERS OF THE US ARE THOSE ISSUED UNDER THE AUTHORITY OF THE 1966 ILLC OR UNDER US DOMESTIC REGULATIONS PURSUANT TO 46 USC 85.

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5. VENEZUELAN FLAG VESSELS PRESENTLY CANNOT QUALIFY FOR 1966 ILLC CERTIFICATES AS ARTICLE 17 OF THE CONVENTION PROHIBITS THE ISSUANCE OF SUCH CERTIFICATES TO A VESSEL OF A NONCONTRACTING NATION. HOWEVER, A VENEZUELAN VESSEL PLYING US WATERS CAN BE ISSUED A FORM B LOAD LINE CERTIFICATE UNDER US DOMESTIC LEGISLATION (46 CFR 40-07-40 AND OTHER APPLICABLE SECTIONS) INFORMATION ON WHICH IS CONTAINED IN USCG PUBLICATION, "LOAD LINE REGULATIONS, CG-176" (ERRONEOUSLY LISTED IN LETTER AS CG-179). A COPY OF THE LATTER WAS SENT TO THE FOREIGN MARITIME ADMINISTRATION REPRESENTATIVE IN CARACAS BY THE CG IN ITS LETTER DATED MARCH 22, 1973. IN THE LETTER THE CG STATED ITS COMMANDANT HAS IN THE PAST AUTHORIZED, ON A SHIP TO SHIP BASIS, VARIOUS CLASSIFICATION SOCIETIES INCLUDING THE AMERICAN BUREAU OF SHIPPING, LLOYDS REGISTRY OF SHIPPING,

BUREAU VERITAS, NORSKE VERITAS AND GERMANISCHER LLOYD THE AUTHORITY TO ISSUE FORM B LOAD LINE CERTIFICATES TO A NONCONTRACTING NATION ON BEHALF OF THE UNITED STATES.

6. USCG OFFICIALS AT US PORTS NORMALLY DO NOT BOARD FOREIGN FLAG VESSELS WITH ASSIGNED LOAD LINES AND REQUEST TO INSPECT THEIR LOAD LINE CERTIFICATES. MERCANTES DEL CARIBE, S. A., THE VESSEL ENTERED US WATERS MERCANTES DEL CARIBE, S. A., THE VESSEL ENTERED US WATERS AND A NUMBER OF IRREGULARITIES WERE NOTED THEREBY CAUSING CG OFFICIALS TO REQUEST TO INSPECT ITS LOAD LINE CERTIFICATE. THE GABRIELA B PRESENTED A 1930 LLA

CERTIFICATE WHICH IS NO LONGER RECOGNIZED AS VALID UNDER THE 1966 CONVENTION. ACCORDINGLY, THE CG LEVIED A FINE IN ACCORDANCE WITH ITS REGULATIONS. THIS INCIDENT SHOULD NOT BE CONSTRUED AS HARRASSMENT AS THE BASIC CONCERN OF THE CG IS THE SAFETY OF THE VESSEL AND ITS CREW. FURTHERMORE, IT SHOULD BE UNDERSTOOD THAT UNLESS THE CG ENFORCES PROVISIONS OF OUR LAWS DESIGNED TO ASSURE THE SAFETY OF VESSELS, THERE IS A DANGER OF THEIR BEING HELD LIABLE IF A VESSEL THAT DID NOT MEET SAFETY REQUIREMENTS WERE PERMITTED TO OPERATE IN US JURISDICTION.

7. AS A RESULT OF THE GABRIELA B PROBLEM, THE QUESTION NOW IS WHETHER VENEZUELAN VESSELS WITH ASSIGNED LOAD LINES PLYING US WATERS HAVE ON BOARD ACCEPTABLE LOAD LINE LIMITED OFFICIAL USE

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CERTIFICATES. THE FACT THAT THE GOV HAS YET TO RATIFY THE 1966 ILLC AND CG RECORDS DO NOT INDICATE OTHER VENEZUELAN FLAG VESSELS HAVING BEEN ISSUED FORM B CERTIFICATES LEADS TO THE CONCLUSION THEY DO NOT AND THAT THEREFORE THEY COULD BE SUBJECT TO FINES WHEN IN US WATERS. THE CG, HOWEVER, HAS INFORMED THE DEPARTMENT THAT IT DOES NOT INTEND TO BOARD FOREIGN FLAG VESSELS (I. E. VENEZUELAN VESSELS) SOLELY TO VERIFY THE AUTHENTICITY OF LOAD LINE CERTIFICATES. UNDER THE CIRCUMSTANCES, THIS STATED POLICY IS CONSIDERED MORE THAN REASONABLE.

8. DRAWING ON THE FOREGOING, THE EMBASSY IS REQUESTED TO INFORMALLY REVIEW THIS PROBLEM WITH THE MOFA AND INDICATE THE INTENT AND DESIRE OF THE USG TO RESOLVE THIS MATTER IN A REASONABLE MANNER WITHOUT OUR GOVERNMENTS UNNECESSARILY RESORTING TO CONFRONTATION POSITIONS WHICH WOULD ONLY SERVE TO EXACERBATE OUR RELATIONS AND HARM OUR MUTUAL TRADE. THAT WE ARE PREPARED TO DO SO IS BASED NOT ONLY ON CONSIDERATION OF THE STATED INTENTIONS OF THE USCG (PARA 7 ABOVE) BUT ALSO ON OUR RECOGNITION THAT THE GOV IS PRESENTLY IN THE PROCESS OF FORMULATING THE

NECESSARY LEGISLATION TO RATIFY THE 1966 ILLC.
REGARDING THE LATTER, WE WOULD BE APPRECIATIVE OF
BEING INFORMED WHEN RATIFICATION IS EXPECTED. ON THE
OTHER HAND, WE WOULD HOPE THE GOV APPRECIATES THE
OBLIGATION OF THE USG AND CG UNDER THE 1966 CONVENTION
AND RECOGNIZES THAT OUR DOMESTIC REGULATIONS ALLOWING FOR
THE ISSUANCE OF A FORM B LOAD LINE CERTIFICATE IS AN
INTERIM MEANS WHEREBY VESSELS OF NONCONTRACTING NATIONS
CAN PLY OUR WATERS WITHOUT THE REQUIRED 1966 ILLC
CERTIFICATES AND OBVIATES THE POSSIBILITY OF A FINE

BEING LEVIED. MOREOVER, UNTIL SUCH TIME AS VENEZUELA
RATIFIES THE 1966 ILLC AND ITS VESSELS ARE DOCUMENTED
ACCORDINGLY, WE TRUST THE GOV WOULD BE WILLING TO
COOPERATE WITH THE USG TO AVOID ANY UNNECESSARY INTERIM
PROBLEMS AND IN THE CASE OF THE GABRIELA B, ENCOURAGE
ITS OWNERS TO OBTAIN A FORM B LOAD LINE CERTIFICATE WHICH
WOULD REMOVE THE PRESENT CAUSE OF CONTENTION. ROGERS

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